SINGAPORE REPORTS.

JONES v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J. Singapore, Pretheroe, Ag. C.J. Malayan Union and Jobling, J.) December 12, 1947]
[Singapore — Criminal Appeal No. 52 of 1947]

Criminal Procedure — Use of statements made to Police — No failure of justice — Criminal Procedure Code, s. 448.

In this case the trial Judge in the course of his summing up and in reference to statements made by witnesses to the Police made use of the expressions "his evidence is recorded in the statement" and "that does corroborate the prosecution story roughly as regards time".

Held, (1) that statements to the Police can only be used to impeach the credit of witnesses and, when proved, do not become independent evidence of facts contained in them; (2) that in view of the evidence as a whole and particularly as the facts concerned were proved by other evidence, the use of the expression by the trial Judge could not have had any effect on the minds of the jury and that therefore in accordance with the provisions of Section 448 of the Criminal Procedure Code, the appeal against conviction must be dismissed.

CRIMINAL APPEAL.

D. K. Walters (*A. J. Braga* with him) for the Appellant.

M. Buttrose (D. P. P.) for the Respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by :—

Murray-Aynsley, C. J. : — In this case, at the conclusion of the hearing, the appeal was dismissed, but the Court intimated that it would give a judgment in writing.

The only point on which we think it necessary to make any observation is in respect of the use of statements made to the police in cross-examination of the persons who had made them.

These statements can only be used to impeach the credit of the witnesses. That is to say, when these statements have been proved, they do not become independent evidence of facts contained in them.

In the present case the trial Judge, no doubt inadvertently, made use of expressions "his evidence is recorded in the statement", "that does corroborate the prosecution story roughly as regards time".

In view of the evidence as a whole, and particularly as these facts were proved by other evidence, we do not consider that the use of these expressions could have had any effect on the minds of the jury and, in accordance with the provisions of section 448 of the Criminal Procedure Code, we dismissed the appeal.

Appeal Dismissed.

CHEANG SUNNY v. RAMANATHAN CHETTIAR & ORS.

[Orig. Civ. Juris. (Thorogood, J.) February 16, 1948]
[Singapore — Civil Suit No. 149 of 1940]

Japanese Judgments and Civil Proceedings Ordinance No. 37 of 1946, ss. 3, 6 — Interlocutory and non-interlocutory orders made by a Japanese Court — Validity of — Singapore Colony Order in Council, 1946, s. 44 — Rules of the Supreme Court, O. 18 r. 4.

This was an application by way of Summons in Chambers in Suit No. 149 of 1940 for an order that the name of one Cheang Soon Wah since deceased who was the third defendant in the matter pending in the 15th February, 1942 may be struck out and the names of Teo Sin Hoon and Teo Guat Choo may be substituted therefor. In 1943, during the Japanese occupation, the defendants obtained an order of Court by which the action was dismissed for want of prosecution. On the hearing of the application it was agreed by the applicant and the respondent in these proceedings that the said order of the Japanese Court was a final order.

Held, that judicial acts done under the control of an occupying power, when they are not of a political complexion, remain good and that all judgments given in accordance with the local law or with such regulations as the enemy was lawfully entitled to prescribe are to be respected at the end of the occupation.

SUMMONS IN CHAMBERS.

A. N. Mitra for the Applicant.

J. K. Gale for the Respondents.

Cur. Adv. Vult.

Thorogood, J. : — The applicant in this matter Cheang Sunny applied by way of Summons (entered No. 419/47) for an order under Order 18, Rule 4 of the Supreme Court Rules 1934, that :—

(a) The name of the above-named Cheang Soon Wah as third defendant in this action may be struck out and the names of Teo Sin Hoon and Teo Guat Choo, the executor and the executrix respectively of the will of the said Cheang Soon Wah, may be substituted therefor :

and (b) That the costs of their application may be costs in the cause.

The Solicitor for the said executor and executrix appeared in answer to the Summons the hearing of which was adjourned to open Court.

The applicant was, and maintains that he still is, the plaintiff in C. S. 149/40. Cheang Soon Wah, now deceased, was a defendant in that matter which was pending on the 15th February, 1942. If that suit were still pending there would be no difficulty in obtaining such an order but in 1943, during the Japanese occupation, the defendants obtained an order of Court by which the action was dismissed for want of prosecution. It is agreed by the applicant and the

respondent in these proceedings that the said order of the Japanese Court was a final order.

The applicant's main submission is that the Japanese order being a final order is no longer valid and that he is at liberty to carry on proceedings in the said suit under the provisions of Section 44 of the Singapore Colony Order in Council 1946.

There is strong authority for the statement that judicial acts done under the control of an occupying power, when they are not of a political complexion, remain good and that all judgments given in accordance with the local law or with such regulations as the enemy was lawfully entitled to prescribe are to be respected at the end of the occupation.

It is no part of the applicant's submissions, as I understand them, that the above is not a correct expression of the relevant International Law. For the applicant, Mr. Mitra contended however that the legislature of the Colony had thought fit not to give full recognition to all acts done by the Japanese Courts and that by expressly providing by the Japanese Judgments and Civil Proceedings Ordinance No. 37 of 1946, (Section 6), that any interlocutory order made by a Japanese Court in proceedings carried on under the provisions of Section 44 of the Singapore Colony Order in Council, 1946, shall be deemed to be valid the said Legislature intended that non-interlocutory orders made by a Japanese Court in such proceedings should be of no effect. No application had been made under Section 5 of Ordinance No. 37/46 to have an order of Court substituted for the said Japanese Order. He submitted that he was entitled, therefore, to carry on proceedings under Section 44 of the above mentioned Order-in-Council.

For the persons served with the Summons, Mr. Gale contended that the Japanese Order in question was a perfectly good order made according to the law of the Colony and the practice of this Court and is therefore, in accordance with International Law, valid unless set aside. The Legislature has taken great care not to state in Ordinance 37/46 that any Japanese decree is invalid but has by Section 3 thereof made provision for setting aside or appealing against Japanese decrees. He submitted that section 6 does not apply as it is agreed that the order in question is not an interlocutory order.

Had the Legislature decided that the relevant principle of International Law was not to be followed and that final orders made by Japanese Courts should be regarded as invalid, it could and no doubt would have legislated accordingly. No such legislation has been enacted: on the contrary Ordinance No. 37/46 was enacted to make provision with regard to Japanese decrees which term includes any judgment, order or decree whatsoever given or made in any suit, action, cause or other civil matter by any Japanese Court. The Ordinance provides for the hearing of applications to appeal against or to set aside on certain grounds Japanese decrees.

I can find nothing in Section 6 of the Ordinance quoted which expressly or impliedly can affect in any way the validity of a final order made by a Japanese Court. The order in question, having been made here in accordance with the local law and forming part of the records of this Court and not having been set aside, is in my opinion, a valid order. I find therefore that suit No. 149/40 no longer exists and that no order can be made on this Summons which purports to be brought in that Suit.

Mr. Mitra also submitted that by contending that the Japanese decree was valid the respondent was "pleading" that decree and that such pleading is disallowed by the provisions of Section 7 of Ordinance No. 37/1946. In reply Mr. Gale submitted that the term "pleading" has a special meaning in Law, that he is before the Court in answer to Summons served on his clients and that he is not pleading the Japanese decree in any way contemplated by Section 7. In any case the words "or otherwise" must be construed as being *ejusdem generis* and that a defence, in which a judgment is normally pleaded, is expressly omitted from the provisions of Section 7.

Having found that the Suit terminated in 1943, it is unnecessary for me to consider here the questions whether the submissions made by the Solicitor for the persons served amount to a pleading or not and, if so, whether such pleading is barred by Section 7 of the Ordinance.

There may be certain courses open to both sides under Ordinance 37/1946 but for the reasons stated above I make no order on this Summons.

No Order.

MILLER v. MILLER.

[Orig. Civil Juris. (Murray-Aynsley, C.J. Feb. 19, 1948]
[Singapore — Divorce No. 31 of 1947]

Divorce — Animus deserendi arising after involuntary separation — Physical impossibility of return — Three year period of desertion not broken by occupation of same room if animus deserendi remains — Special circumstances.

In this case the parties were married, and lived and cohabited in Singapore. There was one child of the marriage. In January 1942, owing to the Japanese invasion, the Respondent wife and her child were evacuated to India. The Petitioner husband was interned